
UTAH LABOR COMMISSION

R. WILLIAM BEST,

Petitioner,

vs.

**JIM NEBEKER TRUCKING and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 06-0290

R. William Best asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of Mr. Best's claim for permanent total disability compensation under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Best claims workers' compensation benefits from Jim Nebeker Trucking and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Nebeker") for a work accident that occurred on December 1, 2004, causing injury to his back. After conducting an evidentiary hearing, Judge Marlowe found that Mr. Best failed to show he was unable to perform other work reasonably available and denied his claim for permanent total disability compensation.

In his motion for review, Mr. Best argues that based on the medical evidence as well as his testimony of his work limitations, he demonstrated that he was unable to perform other work reasonably available.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of facts. The facts relevant to the issue in Mr. Best's motion for review are as follows:

Mr. Best worked for Nebeker as a service technician. At the time of the work accident, he was 26 years old. On December 1, 2004, after spending the day changing about 30-35 diesel truck tires, he began experiencing a sharp pain in his lower and middle back. The pain progressed and Mr. Best reported his movements became more limited, so that by the next week he began missing work. An initial x-ray showed mild chronic degenerative changes and an MRI revealed disc protrusions at L4-5 and L5-S1. He has been since been issued a 5 % whole person impairment for his back condition.

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A functional capacity examination ("FCE") found Mr. Best was able to lift up to 20 pounds occasionally and 10 pounds frequently, sit for an hour, stand for 15 minutes, and walk for 30 minutes. The FCE placed Mr. Best in a light work classification level. Mr. Best testified, however, that his limitations were beyond that reflected in the FCE, and that he can only sit and stand up to three or four hours and then he would need to lie down for an hour or more.

Nebeker Trucking identified 15 jobs that Mr. Best was qualified to do taking into account his skills and restrictions, two of which were positions that Mr. Best had previously worked. Since the work accident, Mr. Best has not returned to work and has been taking classes at a technical school, including a typing class.

DISCUSSION AND CONCLUSION OF LAW

In order to be entitled to a preliminary order for permanent total disability benefits, § 34A -2-413(c)(4) of the Utah Workers' Compensation Act requires Mr. Best to prove, among many things, that he is unable to perform other work reasonably available taking into account his age, education, past work experience, medical capacity and residual functional capacity. The only issue before the Commission is whether Mr. Best has shown that he cannot perform other work reasonably available to qualify for permanent total disability compensation.

Mr. Best, who was relatively young at the time of the work accident, has been classified to work in a light duty job. Two such positions were identified of which Mr. Best appears to be qualified to work; Mr. Best has not refuted his qualifications for these positions in his motion for review. The Commission also finds persuasive Judge Marlowe's recognition that Mr. Best has recently obtained typing and computer skills since returning to school, which would assist him in obtaining further opportunities for work. The Commission finds that, taking into account Mr. Best's age, education, past work experience, medical capacity and residual functional capacity, Mr. Best has not shown that he could not perform other work reasonably available. The Commission concurs with Judge Marlowe's denial of Mr. Best's claim for permanent total disability compensation.

ORDER

The Commission affirms Judge Marlowe's decision denying benefits. It is so ordered.

Dated this 25th day of February, 2009.

Sherrie Hayashi
Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.